IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3480 OF 1995

Geetabai Gopal Kokate .. Petitioner.
Vs.
Chindu Murlidhar Kokate .. Respondent.

Ms.Sharvari Y.Jahagirdhar for the petitioner.
Mr.V.Z.Kankaria for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 1ST DECEMBER, 2005

P.C.:

. Heard learned counsel for the parties.

2. This petition is directed against the judgment and order dated 30.3.1995 passed by 5th Additional District Judge, Nasik in Civil Misc. Appeal No.120 of 1994 dismissing the appeal filed by the petitioner-defendant. The appeal was directed against the judgment and order dated 2.8.1993 passed below Exhibit-5 in Regular Civil Suit No.35/1993 by which the petitioner-defendant no.1 was restrained from causing interference and obstruction to the possession of plaintiffs over the suit property until disposal of the suit. This Court while issuing notice on 30th October, 1995 had passed the following order:

> . "Heard.
> 2. Leave to amend and annex the documents.
> 3. The orders passed in the earlier

> suit No.35 of 1993 at the interim stage are in favour of the petitioner. In the said suit the father of the present respondent Murlidhar Kokate had taken a plea that his son - the present respondent Chindhu had half share. This is clear from para 3 of Exh.C (page17).
> 4. Be that as it may, interests of justice require that both the suits namely suit no.35 of 1993 filed by the present petitioner and suit no.196 of 1993 filed by the respondent be heard together since they relate the same property though the parties may not be exactly the same.
> 5. Hence, though a prima facie case is made out for issuance of rule, with a view to avoiding delay notice before admission returnable on Monday the 11th December, 1995. Apart from the Court notice the petitioner will also serve the respondent alongwith an ordinary copy of this order.
> 6. Pending admission, there will be ad-interim relief in terms of prayer (d)."

3. Pending admission, ad-interim relief in terms of prayer clause (d) was granted. By prayer clause (d), the petitioner had prayed for ad-interim relief in terms of prayer clause (c). While admitting the petition on 18th December, 1995 ad-interim relief in terms of prayer clause (c) was confirmed by which the petitioner had prayed for stay to the effect, implementation and execution of the judgment and order passed by the trial Court below Exhibit-5 and confirmed by the Appellate Court by order dated 30.3.1995. This interim relief has been running against the respondent-plaintiff since 1995. The learned counsel appearing for the parties do not have instructions as to whether Regular Civil Suit No.196/93 is till pending. Keeping that in view

and considering that the interim order passed by this Court in 1995 in terms of prayer clause (c), in my opinion, the merits of the case need not be examined at this stage. The learned counsel appearing for the respondents could not seriously oppose the following order, which, in my opinion, would meet ends of justice:

(a) The trial Court shall decide the suit bearing Regular Civil Suit No.196/93, if not disposed of already, as expeditiously as possible and preferrably within a period of six months from the date of receipt of this order.

(b) If Regular Civil Suit No.35/93 and Regular Civil Suit NO.196/93 are still pending same may be decided together as expressed by this Court in the order dated 30th October, 1995.

(c) Interim relief granted by this Court shall remain operative until disposal of the suit. The trial court shall decide the suit/s on merits, if not disposed of already, in accordance with law and uninfluenced by the orders passed in the proceedings arising out of Exhibit-5 application.

(d) Rule is, accordingly, made absolute. No costs.

(D.B.Bhosale, J.)